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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,931	11/08/2000	Nathan B. Emery	5121	2998

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Millen & Company
P O Box 1927
Spartanburg, SC 29304

EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 06/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS 9

Office Action Summary	Applicati n No. 09/708,931	Applicant(s) EMERY ET AL.	
	Examiner Jenna-Leigh Befumo	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) 8-15 and 34-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 16-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Amendment B, submitted as Paper No. 8 on April 8, 2003, has been entered. Claim 20 has been amended. Therefore, the pending claims are 1 – 36. Claims 8 – 15 and 34 – 36 are withdrawn from consideration as being drawn to a nonelected invention.
2. Applicant's arguments (Amendment B, page 2) are sufficient to overcome the 35 USC 112 rejections set forth in sections 9. The term "fancy weave" is defined as a woven fabric formed by predetermined changes in the interlacing of the warp and filling yarns, and is also known as a complex weave or a decorative weave (Joseph's Introductory Textile Science, 6th Edition, page 207).
3. Amendment B is sufficient to overcome the 35 USC 112 rejection set forth in section 11 of the previous Office Action, since claim 20 has been amended to clarify the strength ranges being claimed.
4. Finally, Applicant's arguments (Amendment B, pages 2 – 6) are sufficient to overcome the 35 USC 102 and 35 USC 103 rejections based on Heiman (5,495,874), Otto (4,512,065), and Willbanks (5,080,952) since none of these references teach napping or raising surface fibers on fancy weave fabrics, as defined above, or jacquard or dobby weave fabric. Dobby weaves are defined as a fabric that has been constructed with the dobby attachments and it is characterized by small geometric-type designs (Joseph's Introductory Textile Science, 6th Edition, page 379). The term jacquard is used to identify complex designs in both knitted and woven fabrics (Joseph's Introductory Textile Science, 6th Edition, page 383). However, new rejections are set forth below.

Election/Restrictions

5. Applicant's election without traverse of Group I, claims 1 – 7 and 16 – 33 in Paper No. 8 is acknowledged.

Claim Rejections - 35 USC § 112

6. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The term “broken filament yarns” in claim 5 is indefinite. It is unclear what the Applicant means by “broken filament yarns”. Is the yarn made from chopped up pieces of filaments? How is the yarn broken, and is the yarn completely broken or are just the filaments in the yarn broken?

Claim Rejections - 35 USC § 102

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 16, 29, 30, 31, 32, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Merriman (1,987,858).

Merriman discloses a woven fabric made from artificial silk threads which is subjected to a napping machine to produce a soft, velvet-like surface on the fabric (column 1, lines 50 – 54). The fabric is a woven fabric having a jacquard or figured design (column 2, line 50). The fabric has filling threads with a high filament content (column 2, lines 51 – 52). The warp threads in the jacquard fabric are preferably made from cotton fibers which are staple fibers (column 3, lines 8 – 10). The staple fibers would inherently form a spun yarn. Additionally, Merriman

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teaches that the filament in the filling yarns are broken during the napping process to produce a desired napped without weakening the threads (column 3, lines 65 – 69). Further, the face of the fabric will inherently have regions which have the same hand on the face and back of the fabric.

Claims 29 and 30 are rejected with claim 16 since the limitations that the fabric is napery or a curtain are viewed as intended use since claims 29 and 30 fail to add any further structure to the fabric.

Claim Rejections - 35 USC § 102/103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1 – 7 and 17 – 28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Merriman.

The features of Merriman have been set forth above. Although Merriman does not explicitly teach the limitations of tensile strength, shear stiffness, SMD surface roughness, and Kawabata System MIU, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. jacquard fabrics having spun yarns and filament yarns) and in the similar production steps (i.e. napping the surface of the fabric) used to produce the napped fancy weave fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed limitations would obviously have been provided by the process disclosed by Merriman. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 1 – 7 and 17 – 28 are rejected.

Claim Rejections - 35 USC § 103

12. Claims 1 – 7 and 16 – 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collier (5,487,936).

Collier discloses a textile fabric which can be used for furnishing fabrics, bed linen, and table linen (column 1, lines 25 – 26). The fabric comprises a first and second yarns wherein one is a multifilament yarn, and the other is a spun fiber yarn (column 2, lines 35 – 40). The spun fiber yarn is used as the warp yarn, so the multifilament yarn would be the filling yarn (column 2, lines 55- 60). Collier teaches that the fabric can be made by weaving using dobby or jacquard capabilities (column 3, lines 53 – 55). The jacquard or dobby feature which produces a pattern by using different weave patterns in combination with each other (column 4, lines 11 – 17). Further, Collier teaches that the fabric can be mechanically finished by processes including brushing, raising, sanding, peaching or sueding (column 5, lines 21 – 25). These processes would break the fibers on the surface of the fabric and produce a pile surface which has a softer hand and improved insulation properties. While Collier doesn't explicitly teach that the mechanically finishing is preformed on both sides of the fabric it would have been obvious to one of ordinary skill in the art to sand or suede both sides of the fabric so that both sides have a softer feel and a textured appearance produced by the sanding process. Thus, both the front and back face of the fabric would have the same hand, surface roughness, and Kawabata System MIU.

Additionally, although Collier does not explicitly teach the limitations surface roughness, Kawabata System MIU, tensile strength, and shear stiffness, it is reasonable to presume that said limitations are present in the invention taught by Collier. Support for said presumption is found

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in the use of similar materials (i.e. a jacquard fabric woven with filament yarns as the filling yarns and spun yarns as the warp yarns) and in the similar production steps (i.e. napping the surface of the jacquard fabric) used to produce the bedding and table linen fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. Therefore, claims 1 – 7 and 16 – 33 are rejected.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
June 18, 2003



CHERYL A. JUSKA
PRIMARY EXAMINER